

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0451
SALES AND USE TAX
For 2003**

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ISSUES

I. Sales and Use Tax—Application to tangible personal property purchased in Indiana for use outside the state

Authority: IC 6-2.5-3-2; IC 6-2.5-5-9(6); IC 6-2.5-5-15; IC 6-6-6.5-2; IC 6-6-6.5-3; IC 6-6-6.5-8(d); IC 6-6-6.5-9;

Taxpayer protests the imposition of use tax on an unregistered aircraft brought into Indiana for a period in excess of thirty days.

II. Tax Administration- Ten Percent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana company with its principal place of business in Indiana. Taxpayer, and its various affiliates, also have a business location in Connecticut and conduct business in all 50 states. Taxpayer purchased an aircraft in Arizona on June 19, 2003 and flew it to Indiana, where it remained for 13 days before its transfer and subsequent registration in Connecticut on September 30th, 2003. Taxpayer submitted an AE-1 exemption form dated October 1st, 2003. No sales or use tax was paid to Arizona, Indiana, or Connecticut. Indiana assessed use tax and registration fees against the aircraft and taxpayer now protests that the tax and registration fee were incorrectly applied to this transaction.

DISCUSSION

I. Sales and Use Tax—Application to tangible personal property in Indiana that was purchased outside the state

When taxpayer acquired this aircraft in Arizona, it brought the aircraft to Indiana and could have claimed an exemption from Indiana sales tax through IC 6-2.5-5-9(6). To take advantage of this statutory exemption, taxpayer had to fill out form AE-1. This form is used expressly for aircraft registered to Indiana residents and which are to be registered and/or titled outside the state of Indiana.

IC 6-6-6.5-2 and IC 6-6-6.5-3 establish the necessity of registration and set the parameters of this requirement. IC 6-6-6.5-2 states in relevant part;

Sec. 2. (a) Except as otherwise provided in this chapter, any resident of this state who owns an aircraft shall register the aircraft with the department not later than thirty-one (31) days after the purchase date.

.....

IC 6-6-6.5-3 also includes, in relevant part;

Sec. 3. (a) Any resident of this state who owns an aircraft, and any nonresident who has established a base in this state and bases an aircraft in this state for more than sixty (60) days, which is not exempt from registration under section 9 of this chapter, shall apply to the department for a certificate of registration for such aircraft.

As to the gross retail tax, IC 6-6-6.5-8(d) states:

A person shall pay the gross retail tax or use tax to the department on the earlier of:

- (1) The time the aircraft is registered; or
- (2) not later than thirty-one (31) days after the purchase date;

unless the person presents proof to the department that the gross retail tax or use tax has already been paid with respect to the purchase of the aircraft as proof that the taxes are inapplicable because of an exemption.

The exemption taxpayer seeks to claim is based on IC 6-6-6.5-9, which states:

Sec. 9. (a) The provisions of this chapter pertaining to registration and taxation shall not apply to any of the following:

.....

(6) An aircraft owned by a resident of this state that is not a dealer and that is not based in this state at any time, if the owner files the required form not later than thirty-one (31) days after the date of purchase; and furnishes the department with evidence, satisfactory to the department, verifying where the aircraft is based during the year.

.....

Taxpayer asserts that the submission of the AE-1 form, albeit late, conforms to the above statutory requirements. The form, correctly documenting the over 90 day lag between taxpayer's purchase of the aircraft and its registration in Connecticut, is not a talisman that can overcome the assessment by its mere appearance. The form comports to IC 6-6-6.5-9 by explicitly informing the taxpayer it must be filed within thirty (30) days after the purchase date. Regardless of the form's arrival time and the method of its presentation, the form as prepared by taxpayer would not provide an exemption under IC 6-6-6.5-9 inasmuch as it documents the taxpayer's failure to fall within the established guidelines for the exemption-i.e. purchasing and failing to register an aircraft in Indiana or elsewhere for more than 31 days and by establishing that the aircraft was not registered for more than 60 days after its purchase.

Taxpayer argues that the imposition of this tax in this fashion could result in a corporate resident of Indiana being taxed for the purchase, and use, of an aircraft in another state without the aircraft ever being based or brought into Indiana. Taxpayer's hypothetical is without merit. The imposition statute of the use tax, IC 6-2.5-3-2, explicitly states:

- (a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property *in Indiana* if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction. (*Emphasis added*)

Taxpayer purchased an aircraft, brought the aircraft to Indiana, and failed to provide a valid exemption or to demonstrate the payment of sales or use tax or registration to another jurisdiction within the respective statutory limits. Despite its failure to file the required forms for Indiana or to register in another state in a timely fashion taxpayer asserts that the established statutory and regulatory procedures should be waived to permit it to operate as it sees fit, presumably paying taxes and filing forms only when taxpayer concludes it should. The Department declines to so find.

FINDINGS

The taxpayer is denied.

DISCUSSION

II. Tax Administration- Ten Percent (10%) Negligence Penalty

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and

follow instructions provided by the department is treated as negligence.
Negligence shall be determined on a case by case basis according to the facts
and circumstances of each taxpayer.

The AE-1 exemption forms are quite clear in their function and application. The title on the form states, "Based out of state Certificate of Exemption for aircraft." Because the form's application was straightforward, the law was clear, and because taxpayer failed to use the form and therefore failed to follow instructions provided by the Department, the taxpayer was negligent.

FINDINGS

The taxpayer is denied.

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